IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

MONDAY, THE 9TH APRIL 2007 / 19TH CHAITHRA 1929

WP(C).No. 13906 of 2006(E)

PETITIONER:

THE PARAPPUR SERVICE CO-OPERATIVE
BANK LTD.NO.474, REP. BY ITS SECRETARY,
JAMES C. JOSEPH, P.O.PARAPPUR,
THRISSUR DISTRICT.

BY ADV. SRI.M.V.BOSE
SRI.VINOD MADHAVAN
SMT.NISHA BOSE

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY
ITS SECRETARY, AGRICULTURE (I.F.A.)DEPARTMENT,
THIRUVANANTHAPURAM.

2. THE DIRECTOR,
AGRICULTURE DEPARTMENT,
THIRUVANANTHAPURAM.

3. PRINCIPAL AGRICULTURE OFFICER,
THRISSUR.

4. THE JOINT REGISTRAR,
DISTRICT CO-OPERATIVE SOCIETY,
THRISSUR.

5. THE REGISTERING AUTHORITY,
MOTOR VEHICLES DEPARTMENT, THRISSUR.

BY ADV.SHRI.P.K.RAVI KRISHNAN, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09/04/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC NO. 13906/2006

APPENDIX

PETITIONER'S EXHIBITS

P1 : COPY OF THE PROCEEDINGS OF THE PRINCIPAL AGRICULTURAL OFFICER, DATED 30/3/1993.

P2 : COPY OF THE PROCEEDINGS OF PRINCIPAL AGRICULTURAL OFFICER, THRISSUR.

P3 : COPY OF ORDER DATED 14/12/1993 OF THE JOINT REGISTRAR, DISTRICT CO-OPERATIVE SOCIETIES, THRISSUR.

P4 : COPY OF PAGES 2 - 5 OF THE CERTIFICATION OF REGISTRATION.

P5 : COPY OF THE VALUATION REPORT DATED 06/11/2000 ISSUED BY THE ASST. EXECUTIVE ENGINEER, MECHANICAL SUB DIVISION, CHALAKUDY.

P6 : COPY OF THE REQUEST MADE BY THE PETITIONER ON 18/12/2001.

P7 : COPY OF THE COMMUNICATION DATED 28/02/2003 ISSUED BY THE 3RD RESPONDENT.

P8 : COPY OF THE UNSIGNED AGREEMENT.

P9 : COPY OF THE COMMUNICATION ISSUED FROM THE OFFICE OF THE 3RD RESPONDENT DATED 20/9/2005.

P10 : COPY OF THE COMMUNICATION DATED 30/10/2005 ISSUED FROM THE OFFICE OF 3RD RESPONDENT.

P11 : COPY OF REQUEST DATED 09/11/2005 MADE BY THE PETITIONER.

P12 : COPY OF THE COMMUNICATION DATED 24/11/2005.

P13 : COPY OF THE JUDGMENT DATED 21/12/2005 IN WPC NO. 35761/2005 (G).

P14 : COPY OF THE REPRESENTATION DATED 10/1/2006 FROM THE PETITIONER BEFORE THE SECRETARY TO GOVERNMENT.

P15 : COPY OF THE ORDER DATED 20/02/2006 PASSED BY THE 1ST RESPONDENT.

// TRUE COPY //

PA TO JUDGE.

C.N.RAMACHANDRAN NAIR,J.

W.P.C. NO. 13906 OF 2006

Dated this the 9th day of April, 2007

JUDGMENT

Petitioner is challenging Ext.P15 order whereunder the Government declined ex-post facto sanction for sale of a tractor effected by the petitioner-society. In fact, the tractor was purchased and registered on 31.1.1994 after obtaining subsidy of Rs. 83,300/- from the Government. The scheme of subsidy under Ext.P1 provided for permission from the Department for disposing of the tractor. It is specifically mentioned if there is violation of the conditions based on which subsidy is granted, the department will have the right to recover the financial assistance given. The relevant clause contained in Ext.P1 is extracted hereunder for easy reference:

> The society should take permission from the Department for disposing the tractor. In case the above conditions are not satisfied, the department will have the right to recover the financial assistance given. The Society will execute an agreement in the prescribed form appended before the payment of financial assistance.

Petitioner admittedly sold the tractor on 31.1.2000 without any prior permission from Government. Therefore Government vide Ext.P9 proposed to recover the subsidy amount from the petitioner-society. When this was challenged before this Court, this Court vide Ext.P13 judgment directed the Government to consider grant of sanction to ex-post facto sale, that is after sale. Government vide Ext.P15 declined sanction against which this W.P. is filed.

2. The contention of the petitioner is that permission required under Ext.P1 is not prior permission and can be applied for after sale. Petitioner has also relied on the decision of the Supreme Court in LIC's case reported in A.I.R. 1986 SC 1370 which pertains to purchase of shares in Indian companies by NRI companies with the permission of Reserve Bank of India. I do not think the principle laid down by the Supreme Court applies to the facts of this case because in this case, what is stated is that the Society should take permission from the department for disposing of the tractor. It pre-supposes that the Government is not only free to decline permission, but is free to impose conditions. Government obviously has a say in the matter because one-

third of the cost of tractor is subsidy amount and Government can even arrange for purchase of tractor for allotment to another society with the same objectives for utilisation for public purpose through Government channels. Moreover, the sale was not effected on account of tractor getting depreciated in value or becoming defective but because the society was running it on loss. The sale price itself indicates that the tractor was in working condition. Therefore I am of the view that permission required under Ext.P1 is prior permission from the Department and not an ex-post facto permission, which, according to the petitioner, Government cannot withhold after effecting sale.

3. In the circumstances, Ext.P15 is upheld in principle. However, I do not think it is a fit case for the Government to claim full subsidy paid to the society because tractor was used for almost five years prior to it's sale. Probably it could have been used for a few more years for serving the farmers. Therefore on equitable ground I feel Government should recover only the proportionate amount of subsidy after reckoning the period for which the tractor was put to use. Accordingly W.P. is disposed of upholding Ext.P15, but directing the

petitioner to deposit one-third of the subsidy amount granted by the Government to the 3rd respondent within a period of six weeks from today.

(C.N.RAMACHANDRAN NAIR)
Judge